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# EXHIBIT A

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## Summonses and Complaint

**SUMM**

**Eighth Judicial District Court**

**CLARK COUNTY, NEVADA**

MGP Apex 582 MultiFamily, LLC, a Nevada limited liability company; MGP Apex 582 Development, LLC, a Nevada limited liability company; MGP Apex 582 Guaranty, a Nevada limited liability company

Plaintiffs,

vs.

TREZ CAPITAL WINSTON LP, a Delaware Limited Partnership; TREZ CAPITAL FUNDING II, LLC, a Delaware limited liability company, Defendants and Real Parties in Interest,

and

BH&G HOLDINGS, LLC, a Nevada limited liability company

Nominal Defendant;

CASE NO. **A-22-863107-C**

DEPT. NO.

**SUMMONS**

**SUMMONS - CIVIL**

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 21 DAYS. READ THE INFORMATION BELOW.**

**TO THE DEFENDANT(S):** Trez Capital Funding II, LLC

A civil Complaint has been filed by the Plaintiff(s) against you for the relief set forth in the Complaint.

1. If you intend to defend this lawsuit, within 21 days after this Summons is served on you, exclusive of the date of service, you must do the following:

- a. File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court, with the appropriate filing fee.
- b. Serve a copy of your response upon the attorney whose name and address is shown below.

2. Unless you respond, your default will be entered upon application of the Plaintiff(s) and failure to so respond will result in a judgment of default against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.

3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members and legislators, each have 45 days after service of this Summons within which to file an Answer or other responsive pleading to the Complaint.

Submitted By:

/s/ Richard C. Gordon, Esq.

Richard C. Gordon, Esq. (Bar # 9036)  
Erik J. Foley, Esq., (Bar #14195)  
SNELL & WILMER L.L.P.  
3883 Howard Hughes Pkwy, #1100  
Las Vegas, NV 89169  
Attorneys for Plaintiff  
(702) 784-5200

STEVEN D. GRIERSON, CLERK OF COURT

12/27/2022

BY:

Demond Palmer  
Deputy Clerk

Date

Regional Justice Center  
200 Lewis Avenue  
Las Vegas, NV 89155

**Demond Palmer**

12/6/2006

**AFFIDAVIT OF SERVICE**

STATE OF NEVADA                     )  
   ) ss.  
 COUNTY OF CLARK                    )

\_\_\_\_\_, being duly sworn says: That at all times herein affiant was and is over 18 years of age, not a party to nor interested in the proceeding in which this affidavit is made. That affiant received \_\_\_\_\_ copy(ies) of the Summons and Complaint, \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ and served the same on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by:

**(Affiant must complete the appropriate paragraph)**

1. Delivering and leaving a copy with the Defendant \_\_\_\_\_ at (state address) \_\_\_\_\_
2. Serving the Defendant \_\_\_\_\_ by personally delivering and leaving a copy with \_\_\_\_\_, a person of suitable age and discretion residing at the Defendant's usual place of abode located at: (state address) \_\_\_\_\_

**[Use paragraph 3 for service upon agent, completing (a) or (b)]**

3. Serving the Defendant \_\_\_\_\_ by personally delivering and leaving a copy at (state address) \_\_\_\_\_
  - (a) With \_\_\_\_\_ as \_\_\_\_\_, an agent lawfully designated by statute to accept service of process;
  - (b) With \_\_\_\_\_, pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is the address of the resident agent as shown on the current certificate of designation filed with the Secretary of State.
4. Personally depositing a copy in a mail box of the United States Post Office, enclosed in a sealed envelope, postage prepaid (Check appropriate method):

- ☐ Ordinary Mail  
☐ Certified mail, return receipt requested  
☐ Registered mail, return receipt requested

addressed to the Defendant \_\_\_\_\_ at Defendant's last known address which is (state address) \_\_\_\_\_

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
 Signature of person making service

4854-4284-0389.3

**SUMM**

**Eighth Judicial District Court**

**CLARK COUNTY, NEVADA**

MGP Apex 582 MultiFamily, LLC, a Nevada limited liability company; MGP Apex 582 Development, LLC, a Nevada limited liability company; MGP Apex 582 Guaranty, a Nevada limited liability company

Plaintiffs,

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and

BH&G HOLDINGS, LLC, a Nevada limited liability company

Nominal Defendant;

CASE NO. A-22-863107-C

DEPT. NO.

**SUMMONS**

**SUMMONS - CIVIL**

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 21 DAYS. READ THE INFORMATION BELOW.**

**TO THE DEFENDANT(S):** Trez Capital Winston LP

A civil Complaint has been filed by the Plaintiff(s) against you for the relief set forth in the Complaint.

1. If you intend to defend this lawsuit, within 21 days after this Summons is served on you, exclusive of the date of service, you must do the following:

- a. File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court, with the appropriate filing fee.
- b. Serve a copy of your response upon the attorney whose name and address is shown below.

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3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members and legislators, each have 45 days after service of this Summons within which to file an Answer or other responsive pleading to the Complaint.

Submitted By:

STEVEN D. GRIERSON, CLERK OF COURT

12/27/2022

BY:

Deputy Clerk

Date

/s/ Richard C. Gordon, Esq.

Richard C. Gordon, Esq. (Bar # 9036

Erik J. Foley, Esq., (Bar #14195)

SNELL & WILMER L.L.P.

3883 Howard Hughes Pkwy, #1100

Las Vegas, NV 89169

Attorneys for Plaintiff

(702) 784-5200

Regional Justice Center

200 Lewis Avenue

Las Vegas, NV 89155

**Demond Palmer**

12/6/2006

**AFFIDAVIT OF SERVICE**

STATE OF NEVADA                     )  
   ) ss.  
 COUNTY OF CLARK                    )

\_\_\_\_\_, being duly sworn says: That at all times herein affiant was and is over 18 years of age, not a party to nor interested in the proceeding in which this affidavit is made. That affiant received \_\_\_\_\_ copy(ies) of the Summons and Complaint, \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ and served the same on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by:

**(Affiant must complete the appropriate paragraph)**

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2. Serving the Defendant \_\_\_\_\_ by personally delivering and leaving a copy with \_\_\_\_\_, a person of suitable age and discretion residing at the Defendant's usual place of abode located at: (state address) \_\_\_\_\_

**[Use paragraph 3 for service upon agent, completing (a) or (b)]**

3. Serving the Defendant \_\_\_\_\_ by personally delivering and leaving a copy at (state address) \_\_\_\_\_
  - (a) With \_\_\_\_\_ as \_\_\_\_\_, an agent lawfully designated by statute to accept service of process;
  - (b) With \_\_\_\_\_, pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is the address of the resident agent as shown on the current certificate of designation filed with the Secretary of State.
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- ☐ Ordinary Mail  
☐ Certified mail, return receipt requested  
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addressed to the Defendant \_\_\_\_\_ at Defendant's last known address which is (state address) \_\_\_\_\_

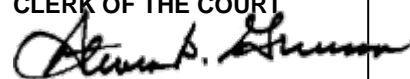
I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
 Signature of person making service

4891-9217-1590.1

Electronically Filed  
12/27/2022 12:15 PM  
Steven D. Grierson  
CLERK OF THE COURT



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CASE NO: A-22-863107-C  
Department 5

*Attorneys for Plaintiffs*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

MGP APEX 582 MULTIFAMILY, LLC, a  
Nevada limited liability company; MGP APEX  
582 DEVELOPMENT, LLC, a Nevada limited  
liability company; MGP APEX 582  
GUARANTY, LLC, a Nevada limited liability  
company;

Plaintiffs,

vs.

TREZ CAPITAL WINSTON LP, a Delaware  
Limited Partnership; TREZ CAPITAL  
FUNDING II, LLC, a Delaware limited  
liability company,

Defendants and Real  
Parties in Interest,

and

BH&G HOLDINGS, LLC, a Nevada limited  
liability company

Nominal Defendant.

Case No.

Dept No.

**VERIFIED COMPLAINT**

**EXEMPT FROM ARBITRATION:  
INJUNCTIVE RELIEF REQUESTED  
AND SEEKS DAMAGES IN EXCESS OF  
\$50,000**

Snell & Wilmer

LLP  
LAW OFFICES  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, Nevada 89169  
702.784.5200

1 MGP Apex 582 Multifamily, LLC; MGP Apex 582 Development, LLC; and MGP Apex  
 2 582 Guaranty, LLC (collectively, “Plaintiffs” or “MGP”) by and through their counsel, the law  
 3 firm of Snell & Wilmer L.L.P., files their Complaint against Trez Capital Winston LP and Trez  
 4 Capital Funding II, LLC and alleges as follows:

#### 5 JURISDICTION AND VENUE

6 1. This Court has subject matter jurisdiction over this action under Section 6, Article  
 7 6 of the Nevada Constitution and pursuant to NRS 3.220.

8 2. This Court has jurisdiction over the parties pursuant to NRS 14.065 on the grounds  
 9 that such jurisdiction is not inconsistent with the Nevada Constitution or the United States  
 10 Constitution; including that each foreign party has sufficient minimum contacts with the State of  
 11 Nevada, which comport with notions of fair play and substantial justice, to permit the exercise of  
 12 personal jurisdiction over them.

13 3. Venue is proper in this judicial district pursuant to NRS 13.040.

#### 14 PARTIES

15 4. Plaintiff MGP Apex 582 Multifamily, LLC is a limited liability company formed  
 16 in the State of Nevada.

17 5. Plaintiff MGP Apex 582 Development, LLC is a limited liability company formed  
 18 in the State of Nevada.

19 6. Plaintiff MGP Apex 582 Guaranty, LLC is a limited liability company formed in  
 20 the State of Nevada.

21 7. Defendant Trez Capital Winston LP is a Delaware limited partnership.

22 8. Defendant Trez Capital Funding II, LLC is a Delaware limited liability company.

23 9. Trez Capital Winston LP and Trez Capital Funding II, LLC are alter egos of each  
 24 other. There is such unity of interest and ownership between both such that they are inseparable  
 25 from each other and adherence to the corporate fiction of a separate entity would sanction fraud  
 26 or promote a manifest injustice. Accordingly, the two entities are hereinafter collectively referred  
 27 to as “Trez,” or “Defendants.”

28 ///

10. Nominal Defendant BH&G Holdings, LLC (“BH&G” or the “Company”) is a Nevada limited liability company with a principal place of business in Las Vegas, Nevada. BH&G is the title owner of record of the Apex at Galleria Project.

**DERIVATIVE AND DEMAND REJECTION/FUTILITY ALLEGATIONS**

11. Plaintiffs bring this action derivatively, and pursuant to Rule 23.1 of the Nevada Rules of Civil Procedure, in the right and for the benefit of BH&G to redress injuries suffered and to be suffered by BH&G as a direct result of the Defendants’ conduct. BH&G is named as a nominal Defendant solely in a derivative capacity. This is not a collusive action to confer jurisdiction on this Court that it would not otherwise have.

12. Plaintiffs will adequately and fairly represent BH&G’s interests in enforcing and prosecuting its rights, and as interest holders of BH&G, have standing to represent the same.

13. Plaintiffs were interest-holders of BH&G at the time of the wrongdoing complained of, have continuously been interest-holders since that time, and are a current BH&G interest-holders.

14. The members of BH&G include: the Plaintiff entities, as well as TRU Management Group LLC, Pro 42 Capital Group LLC, and TRU Development LLC. Plaintiffs own more than a 97% interest in BH&G. The remaining members (who are not participating in this action) own less than 3% of BH&G.

15. The Company is managed by co-managers, Plaintiff MGP Apex 582 Development, LLC and Tru Development, LLC.

16. Pursuant to Section 4.1 of the Company’s Operating Agreement, unanimous consent of both managers is required to initiate litigation on behalf of the Company. Plaintiffs sought consent from both managers to commence the pending litigation on behalf of BH&G, but unanimous consent was not provided.

17. Specifically, Plaintiffs made demand to the co-manager, Tru Development LLC, on December 20, 2022, both orally and in writing. That demand was rejected on the same day. For this reason, any future demand by Plaintiffs is excused because such demand would be futile.

18. As such, the Plaintiff entities file this suit as a derivative action for the benefit of BH&G.

### GENERAL ALLEGATIONS

#### A. The Project

19. BH&G and Trez entered into a Loan Agreement (“Loan Agreement”) whereby Trez agreed to provide up to \$64,560,000 in construction funding to BH&G.<sup>1</sup> The purpose of this loan was to finance the construction of residential apartments in the City of Henderson known initially as Apex 582, and most recently, as the Apex at Galleria (the “Project”). BH&G is the owner of the Project.

20. Though the Loan Agreement was represented to close in December 2020, delays by Trez pushed the date of execution back to July 21, 2021. This delayed closing was the first delay of at least seven months (the “First Delay”).

21. Under the Loan Agreement, Trez was obligated to provide a “Construction Advance” upon commencement of the Project. Trez was also obligated to provide further Construction Advances, upon application by BH&G, for the costs of labor, materials, and services supplied for the Project.

22. In August 2021, mobilization was initialized by all necessary parties, and in September 2021, BH&G began development on the Project.

23. BH&G had met all the contractual terms for funding of the Construction Advance. However, despite repeated requests by BH&G, Trez did not fund the first Construction Advance until *seven months later*, on April 11, 2022 (the “Second Delay”).

24. During this Second Delay, BH&G had no choice but to fund the Project itself, causing it substantial financial hardship. Specifically, BH&G was forced to fund construction using \$4.2 million of its own funds. In fact, BH&G paid the first four pay applications from its general contractor. It was not until the fifth pay application that Trez finally began funding pursuant to its obligations under the loan agreement.

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<sup>1</sup> The original lender in the Loan Agreement was Trez Capital (2015) Corporation. Trez Capital (2015) Corporation subsequently assigned its interest, rights, and obligations in the Loan Agreement to Defendant Trez Capital Winston LP.

**B. The Arch Culvert**

25. Trez's stated excuse for failing to timely fund the Initial Advance is that it demanded that BH&G first have an agreement in place with the City of Henderson (the "City") and various other governmental agencies regarding the construction of an arch culvert on the property (the "Arch Culvert").

26. An arch culvert is a structure used to divert and control the flow of ground water and to prevent flooding.<sup>2</sup>



27. The Project's Arch Culvert is, by definition, a public-private partnership requiring various levels of involvement and approval from the following municipalities: U.S. Army Corp of Engineers, Clark County Department of Public Works, Clark County Regional Flood Control District, Southern Nevada Water Authority, and the City of Henderson Department Public Works. Its design and purpose are to direct water to Lake Mead and to prevent flooding of the surrounding area. To maximize the value of the property and the Project, by allowing for higher density housing, the Arch Culvert is to be constructed underground.

28. Though the Arch Culvert would typically be the City's construction project, the City agreed to allow BH&G to construct the culvert underground and in a manner to maximize the housing density and the value of the Project. The agreement, reached in principle, would require BH&G to fund and develop the construction of the Arch Culvert, whereby the City would

<sup>2</sup> The culvert pictured here is only an example and is not the specific culvert at issue in this dispute.

1 subsequently reimburse BH&G up to 49 percent of its total Arch Culvert costs (the  
2 “Reimbursement Agreement”).

3 29. The Arch Culvert project is identified in the Master Plan Update of the Las Vegas  
4 Valley, December 2018. The Arch Culvert has regional flood control significance and is in the  
5 same hydrological area as Clark County, City of Henderson, the City of Las Vegas, and the City  
6 of North Las Vegas.

7 30. All drainage easements and permanent rights-of-way or rights-of-entry for  
8 construction of the Arch Culvert have been obtained to allow the construction of the Arch  
9 Culvert.

10 31. As with any public (i.e., state, county, municipal) construction project, BH&G was  
11 required to post performance and payment bonds (the “Bond”). *See* NRS 39.025. The contract  
12 for the construction of the Arch Culvert was bid at \$10.1 million. The City established this same  
13 amount as the required Bond, which BH&G paid and funded from the agreed upon use and  
14 proceeds of the Project.

15 32. However, Trez was not satisfied with the language of the Bond, itself. Trez slow-  
16 walked negotiations with the City for eight months before it finally agreed to the terms. This self-  
17 induced delay was the excuse Trez’s used for its untimely payment of the first Construction  
18 Advance. Though, on information and belief, Trez stalled to fund the loan because it lacked  
19 capital to fund it.

20 33. As a result of Trez’s delay, BH&G suffered cost overruns, including with  
21 “extended general conditions,”<sup>3</sup> and adjustments for the rapidly rising cost of construction  
22 materials, all of which BH&G had to fund itself, contrary to the purpose of the Loan Agreement.  
23 In fact, an independent audit found that the Bond delay “caused the proposed GMP Reset  
24 Proposal from Burke Construction dated June 4, 2022, for \$10,527,089.22, largely attributed to  
25 escalation in materials pricing that occurred from the date of the original GMP issuance to when  
26 they were authorized to finalize their agreements with their sub-contractor and vendors.”

27  
28 <sup>3</sup> “General conditions” are the daily cost to a developer incurred by merely being onsite, including building infrastructure, equipment rental, wasted labor costs, and other overhead.

34. After the Bond was paid, BH&G proceeded to finish design of the Arch Culvert. After reviewing the plans for the Arch Culvert, the City approved the design and issued the required permits. However, in February 2022, during a collateral review by another governmental agency, some minimal “delta red line” design changes were requested. Thus, in April 2022, BH&G submitted the amended plans for the Arch Culvert, incorporating the requested changes. In November 2022, the revised delta red line revisions were approved by all agencies and municipalities.

35. The Reimbursement Agreement—which would allow BH&G to recoup up to 49 percent of its \$10.1 million investment into the Arch Culvert—could not be executed until the plans had been approved by the City and all relevant governmental agencies. Hence, approval of the amended plans, issuance of the new permits, and execution of the Reimbursement Agreement was (and still is) crucial to the financial success of the Project.

**C. Trez Interferes and Induces a Default**

36. By mid-2022, Trez had only funded approximately \$22.5 million of the \$64.5 million available under the Loan Agreement. Hence, it was still obligated to BH&G for an additional \$42 million. On information and belief, Trez had depleted its liquid assets and had been exploring options to rid itself of this and various other creditor commitments.

37. In June 2022, BH&G’s contractor, Burke Construction Group, Inc. (“Burke”) submitted a change order seeking an additional \$10.5 million for cost increases it alleges resulted from the delays, including from extended general conditions and the rising costs of construction materials due to inflation.

38. Burke was required to provide all bids and backup to the BH&G, which it did not do. BH&G was empowered to review, and either object or approve the bids. BH&G denied the change order request because, among other things, Burke did not provide at least three bids as a minimum to the BH&G. Nevertheless, Trez Vice President Adrian Watkins requested a review of the change order. but was submitted to Trez for comment and review upon the request of Adrian Watkins.

///

39. Under the Loan Agreement, change orders exceeding \$50,000 in additional costs required Trez's approval. However, no provision of the Loan Agreement allowed Trez to approve a change order itself or to *compel* BH&G to approve a change order.

40. Nevertheless, Trez demanded that BH&G pay Trez the amount of the change order, plus additional overruns caused by Trez's delays, within five days, i.e., by July 18, 2022. Trez demanded a total amount of \$18.5 million, to "rebalance" the loan.

41. During this time, Trez refused to provide further funds as required under the Loan Agreement.

42. Pursuant to the Loan Agreement, BH&G was obligated to make a payment of \$4,075,464 to Trez by July 14, 2022.

43. Trez repeatedly assured BH&G that it would extend the deadline for both pending July 2022 payments. Beginning as early as February 2022, Adrian Watkins, Trez's Vice President, orally assured BH&G that it would extend the payment deadlines and confirmed in email exchanges that he was working to formalize the extensions.

44. For example, on February 21, 2022, BH&G agent Tim Deters told Trez that "we would also like to modify the payment date and extend 7-8 months." Trez responded, "yes, we are fine with that arrangement." (Emphasis added).

45. Then, on March 17, 2022, BH&G emailed Trez, asking "where things stand on the internal approval for extending that payment date." Trez's response did not equivocate: "I will be putting the payment date extension into credit next week."

46. Financially harmed by Trez's improper demands for payment of the \$10.5 million change order, and \$8 million in similar overruns, BH&G was unable to make the July 14, 2022, and July 18, 2022, payments, and was dependent upon the extension Trez had promised.

47. Trez never formalized the extension it had promised.

48. On July 29, 2022, Randy Norton, principal of Plaintiffs and of BH&G, traveled to Trez's office in Dallas to try to resolve the outstanding extension modification. It was there that Trez informed BH&G that Trez would be issuing a notice of default.

///

1           49.     On August 11, 2022, Trez issued a Notice of Default in betrayal of its assurances  
2     that the payment deadlines would be extended.

3           **D.     Trez's Conduct Deprived BH&G of Its Right to Cure**

4           50.     Under Nevada law, commercial borrowers have an absolute right to cure a default  
5     within 35 days following a notice of default. NRS 107.080(2), (3). BH&G therefore had the  
6     statutory right to cure the default until September 15, 2022, and the equitable right to cure  
7     thereafter. But Trez acted to (1) prevent BH&G from maintaining its payment obligations before  
8     the Notice of Default was issued, (2) prevent BH&G from curing after the Notice of Default and  
9     before the statutory right-to-cure had expired, and (3) deprive BH&G of its right to cure through  
10    its misconduct continuing to the present date.

11           **1.     *Trez's Misrepresentations Deprived BH&G of Its Statutory Right to Cure***

12           51.     The Project includes a "Retail Hard Corner" that is to be sold for commercial  
13    development. A hard corner is real property that directly abuts the intersection of two roads,  
14    making it ideal for the placement of gas stations or other convenience services.

15           52.     To maximize the return, BH&G intended to sell the Retail Hard Corner after the  
16    rest of the property was developed. Given Trez's repeated assurances that an extension of  
17    payment deadlines was forthcoming, BH&G was under no pressure to sell the Retail Hard Corner  
18    prior to the completion of the Project.

19           53.     The estimated value of the Retail Hard Corner, before completion of the Project,  
20    was approximately \$5.3 million. On information and belief, its value could have reached up to  
21    \$20 million after completion of the Project, subject to lease and credit of tenant. Nevertheless,  
22    had BH&G known that Trez had no intention of following through with its promised extensions,  
23    it would have sold the Retail Hard Corner and paid that toward the balance owed to Trez.

24           54.     Additionally, as described above, *supra* Parts A–B, Trez's conduct substantially  
25    delayed the Bond for the Arch Culvert, which directly blocked the reimbursement—up to 49  
26    percent—BH&G would have received upon execution of the Reimbursement Agreement with the  
27  
28

1 City. Because of these delays, BH&G was damaged an additional \$4,949,000 of unreimbursed  
2 funds.<sup>4</sup>

3 55. Combined, BH&G could have applied \$10,249,000 toward the amount owed under  
4 the Loan Agreement. Furthermore, BH&G had sufficient capital to pay the remaining  
5 outstanding amount, thus avoiding any default. Thus, Trez's conduct put BH&G into default and  
6 its misrepresentations deprived BH&G of the opportunity to cure before the Notice of Default  
7 was issued.

## 8 9 2. *Trez Abuses a Power of Attorney to Deprive BH&G of Its Statutory Right to Cure*

10 56. Under the Loan Agreement, during an Event of Default,<sup>5</sup> Trez had the right to "to  
11 perform all work necessary to complete the construction of the Improvements substantially in  
12 accordance with the Plans and Governmental Requirements." To that end, it was authorized, *but*  
13 *not obligated*, to act "as the attorney-in-fact of [BH&G]." If Trez opted to exercise this remedy,  
14 it was authorized to exercise power of attorney for only five expressly enumerated functions (the  
15 "Power of Attorney Provision"):

16 (i) use such sums as are necessary, . . . make such changes or corrections  
17 in the Plans and employ such engineers, architects and contractors as may  
18 be required *for the purpose of completing the construction* of the  
Improvements substantially in accordance with the Plans and  
Governmental Requirements,

19 (ii) execute all applications and certificates in the name of Borrower that  
20 are required *for completion of the construction* of the Improvements, or  
for the benefit of the Property,

21 (iii) endorse the name of Borrower on any checks or drafts representing  
22 proceeds of the Insurance Policies, or other checks or instruments payable  
to Borrower with respect to the Property,

23 (iv) do every act *with respect to the construction* of any of the  
Improvements that Borrower may do, and

24 (v) prosecute or defend any action or proceeding incident to the Property.

25 (Emphasis added).

26 ///

27  
28 <sup>4</sup> As described in detail below, *infra* Part D.3, Trez continued to block BH&G's ability to cure  
with regard to the Arch Culvert *after* the Notice of Default as well.

<sup>5</sup> "Event of Default" is used herein as defined in the Loan Agreement. *See* Ex. 1 ¶ 5.01.

1           57. In Short, the Power of Attorney Provision authorized Trez to protect the property  
2 and to work toward the completion of the construction of the Project. It did not authorize Trez to  
3 act in its own self-interest or to facilitate any foreclosure proceeding. And it certainly did not  
4 authorize Trez to subvert the Project or to work against the interest of BH&G, the *de facto*  
5 represented party in the attorney-in-fact relationship.

6           58. On July 29, 2022—13 days before the Notice of Default and **48 days** before the  
7 statutory right to cure expired—Trez sent letters to (1) the City of Henderson’s attorney, (2) its  
8 City Engineer, and (3) the Clark County Regional Flood Control District. The letter stated that,  
9 pursuant to a power of attorney granted in the Loan Agreement, BH&G “has appointed Trez  
10 Capital as its attorney-in-fact.” Under this purported appointment, Trez informed the three  
11 recipients, “you are to deal only with Trez Capital, and not with [BH&G], in connection with the  
12 negotiation and finalization of the Project, the Participation Contract and any and all agreements  
13 and approvals related thereto.”

14           59. On the same date, Trez sent a similar letter to BH&G’s surety for the Bond,  
15 SureTec Insurance company, asserting power of attorney and informing the surety, “from this  
16 point forward you are to deal only with Trez Capital, and not with [BH&G], in connection with  
17 the Bond.”

18           60. In early November, BH&G received oral confirmation from the City that it, and all  
19 required governmental agencies had approved the amended plans for the Arch Culvert. The City  
20 indicated it was ready to formally approve the delta red line revisions, the amended plans, and  
21 reissue the water arch culvert permits. This would finally allow BH&G and the City to execute  
22 the Reimbursement Agreement, whereby BH&G would recoup \$4,949,000 of its investment, as  
23 outlined in the business plan approved by Trez.

24           61. In fact, BH&G has new bids in-hand for the Arch Culvert project that reduce the  
25 cost from \$10.1 million to \$6.4 million. BH&G’s corresponding bond would also decrease to  
26 \$6.4 million. Under the Reimbursement Agreement, BH&G would be responsible for only  
27 \$3,264,000 of the \$6.4 million amount. Thus, BH&G’s total reimbursement of the \$10.1 million  
28 Bond would be, \$6,836,000 (calculated from bond requirement reduction, and reimbursement

1 amount). This amount, coupled with the sale of the Retail Hard Corner (which Trez is also  
2 blocking) and BH&G's own funds would easily have allowed it to cure the default.

3 62. However, Trez used the Power of Attorney Provision to prohibit BH&G from  
4 moving forward with the City on the plans, permits, and Reimbursement Agreement for the Arch  
5 Culvert, further delaying the Project and preventing BH&G from curing during the statutory  
6 right-to-cure period (the "Third Delay").

### 7 3. *Trez Continues to Prevent BH&G from Curing*

8 63. Upon receiving the Notice of Default, BH&G immediately retained Construction  
9 Management and Development, Inc. ("CM&D") to, among other things, audit the project, resolve  
10 any development issues on the property, locate and identify take-out lenders, i.e., lenders who  
11 will fully fund the project and pay of the entire amount owed to Trez, thus taking out those loans.

12 64. With MGP, CM&D has located multiple lenders who expressed willingness to  
13 provide take-out financing, pending resolution of the Arch Culvert and related issues.

14 65. But because of Trez's continued and improper interference with BH&G's ability to  
15 finalize the Arch Culvert documents with the City, BH&G is unable to secure take-out financing,  
16 which would cure the default, pay off Trez in full, and satisfy the Trez Loan Agreement.

### 17 E. Trez Led BH&G to Believe Trez Was Using 18 the Power of Attorney to Further the Project

19 66. On, September 9, 2022, Trez filed in the Eighth Judicial District Court seeking the  
20 appointment of a receiver to protect the property pending a potential foreclosure action. On  
21 September 20, 2022, the Court granted that request.

22 67. Despite Trez's obligation while acting as BH&G's attorney-in-fact to keep BH&G  
23 informed of all developments related to the Project, Trez kept BH&G in the dark.

24 68. BH&G was informed that Trez had retained Kaempfer Crowell and was led to  
25 believe this was for the purpose of finalizing the details of the Arch Culvert documents.

26 69. The Notice of Sale, indicating a foreclosure was being processed, was not issued  
27 until December 7, 2022. More importantly, *it was not until December 13, 2022, that BH&G*  
28 *learned from the Receiver that Trez was not attempting to finalize the Arch Culvert documents.*

70. In fact, on or about December 13, 2022, Trez expressly informed BH&G that it was waiting until after the foreclosure sale to speak with the City because “it would be cleaner” and “they could start fresh” (the “Fourth Delay”).

71. Hence, it wasn’t until mid-December 2022 that BH&G learned that Trez was not working to develop the Project and as such was depriving BH&G of its right to cure. As a result of Trez’s inaction and in contravention of their asserted power of attorney, Plaintiffs are now forced to take emergency action to protect their rights and prevent foreclosure.

**F. Trez’s Use of the Power of Attorney Breached the Loan Agreement**

72. As described above, *supra* Part D.2, the Power of Attorney provision authorized Trez to act only to facilitate the completion of the Project and to protect the property. Instead, Trez acted for its own self-interests, blocking BH&G’s contact with the City, thus preventing finalization of the Arch Culvert documents, and preventing BH&G from curing any default.

**G. Trez’s Combined Delays**

73. Trez’s four delays, beginning in December 2020, combined to delay the Project for over a year and required BH&G to spend over \$4 million to fund the development—money that was supposed to come from Trez. Indeed, Trez only participated as an actual lender for four months (April through July 2022) of the entire Project. Thus, to date, Trez has effectively delayed the Project 20 months.

**H. A Foreclosure Sale Is Now Pending**

74. Pursuant to the Notice of Sale, the foreclosure sale is scheduled for January 10, 2023, at 10:00 a.m.

**FIRST CAUSE OF ACTION**

**Fraudulent Misrepresentation**

75. Plaintiffs re-allege and reincorporate every allegation from the paragraphs above.

76. As described with particularity above, Defendants represented to BH&G that they would extend payment deadlines under the Loan Agreement.

77. These representations were false. On information and belief, Defendants knew they did not intend to extend the payment deadlines.



90. BH&G justifiably relied on these representations to, among other things, delay selling the Retail Hard Corner.

91. As a result of Defendants' conduct, BH&G has suffered damages in excess of \$15,000.

92. Defendants' continued conduct will cause BH&G immediate irreparable harm for which BH&G has no adequate remedy at law.

93. Plaintiffs have been required to retain counsel to protect their rights and the rights of BH&G and are therefore entitled to an award of their attorney's fees and costs.

### **THIRD CAUSE OF ACTION**

#### **Breach of Contract**

94. Plaintiffs re-allege and reincorporate every allegation from the paragraphs above.

95. BH&G and Defendants are parties to the Loan Agreement.

96. Among other things, the Loan Agreement granted Defendants the power of attorney to perform certain authorized acts in the event of a default.

97. Defendants breached the Loan Agreement by, among other things, exceeding its contractual authority to act pursuant to the Power of Attorney Provision, in direct contravention of the acts authorized therein.

98. Defendants also breached the Loan Agreement by failing to fund the Initial Advance pursuant to Section 2.

99. As a result of Defendants' conduct, BH&G has suffered damages in excess of \$15,000.

100. Defendants' continued conduct will cause BH&G immediate irreparable harm for which BH&G has no adequate remedy at law.

101. Plaintiffs have been required to retain counsel to protect their rights and the rights of BH&G and are therefore entitled to an award of their attorney's fees and costs.

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**FOURTH CAUSE OF ACTION**

**Breach of Implied Covenant of Good Faith and Fair Dealing**

102. Plaintiffs re-allege and reincorporate every allegation from the paragraphs above.

103. BH&G and Defendants are parties to the Loan Documents.

104. The Loan Documents are valid and enforceable contracts.

105. Under the Loan Documents, BH&G expected to enjoy the right to pay its debt to Defendants, including through refinancing the loan, in exchange for the use, enjoyment, and improvement of the Property, and such expectation was justified under the circumstances.

106. BH&G informed Defendants that it was seeking outside financing to pay its debt to Defendants and remedy its default.

107. BH&G further informed Defendants that it had engaged lenders who were willing and able to provide said financing upon reaching a resolution regarding the Arch Culvert issue with the City of Henderson.

108. Defendants intentionally stalled all attempts at reaching a resolution regarding the Arch Culvert issue until after the scheduled foreclosure sale, thereby preventing remedy of BH&G's default.

109. Defendants breached the duty of good faith and fair dealing by violating the purpose of the Loan Documents when they actively sought to prevent BH&G from obtaining outside financing to meet its obligations under the Loan Documents.

110. Defendants further breached the duty of good faith and fair dealing by, among other things, taking control of discussions with the City of Henderson under their purported contractual power of attorney and then misrepresenting to BH&G that they sought resolution of the single condition hindering refinancing, thereby leaving BH&G in a false state of repose.

111. Defendants' interference with BH&G's attempts to obtain separate financing was deliberate.

112. Defendants further denied BH&G's justifiable expectations by delaying the payment of advance owed under the Loan Agreement.

113. As a result of Defendants' conduct, BH&G has suffered damages in excess of \$15,000.

114. Defendants' continued conduct will cause BH&G immediate irreparable harm for which BH&G has no adequate remedy at law.

115. Plaintiffs have been required to retain counsel to protect their rights and the rights of BH&G and are therefore entitled to an award of their attorney's fees and costs.

116. Defendants acted with oppression, fraud, or malice and are therefore liable for punitive damages under NRS 42.005.

### **FIFTH CAUSE OF ACTION**

#### **Breach of Fiduciary Duties of Care and Loyalty**

117. Plaintiffs re-allege and reincorporate every allegation from the paragraphs above.

118. By exercising their option to act as BH&G's attorney-in-fact under the Loan Agreement, Defendants accepted the obligation to act in BH&G's interests as described in the Power of Attorney Provision, and therefore became a fiduciary of BH&G.

119. Fiduciary duties include the duties of care and loyalty.

120. The duty of care entails, among other things, an obligation to exercise the requisite degree of care in the process of decision making to act on an informed basis.

121. The duty of loyalty includes the obligation to not use a position of control of to further one's own financial interests or the financial interests of another to the detriment of the entity on whose behalf the fiduciary acts.

122. Defendants breached the duties of care and loyalty by, among other things, acting in their own self-interest to the detriment of BH&G, including by delaying the funding of the loan pursuant to the Loan Agreement, blocking BH&G from working with the City on the Arch Culvert documents, plans, and permits, and failing to act to finalize the documents, plans, and permits for the Arch Culvert.

123. As a result of Defendants' conduct, BH&G has suffered damages in excess of \$15,000.

124. Defendants' continued conduct will cause BH&G immediate irreparable harm for which BH&G has no adequate remedy at law.

125. Plaintiffs have been required to retain counsel to protect their rights and the rights of BH&G and are therefore entitled to an award of their attorney's fees and costs.

126. Defendants acted with oppression, fraud, or malice and are therefore liable for punitive damages under NRS 42.005.

### **SIXTH CAUSE OF ACTION**

#### **Intentional Interference with Prospective Economic Advantage**

127. Plaintiffs re-allege and reincorporate every allegation from the paragraphs above.

128. BH&G had prospective contractual relationships with several lenders willing to offer new financing for the Project.

129. BH&G informed Defendants of these prospective sources of financing on numerous occasions.

130. BH&G informed Defendants that this potential funding could not move forward until a resolution was reached with the City of Henderson regarding the Arch Culvert issue.

131. Defendants intended to harm BH&G by preventing BH&G from obtaining new financing and to foreclose on the significantly appreciated property to Defendants' personal advantage.

132. Defendants intentionally ensured the perpetuation of the conditions preventing BH&G from obtaining new financing.

133. Such actions interfered with BH&G's prospective contractual relationships.

134. Defendants had no privilege or justification to prevent BH&G from obtaining, particularly given Defendants' repeated complaints of BH&G's failure to pay the amounts due and owing to Defendant.

135. Absent Defendants' interference, BH&G would have been able to secure additional funding from its prospective lenders.

136. As a result of Defendants' conduct, BH&G has suffered damages in excess of \$15,000.

137. Defendants' continued conduct will cause BH&G immediate irreparable harm for which BH&G has no adequate remedy at law.

138. Plaintiffs have been required to retain counsel to protect their rights and the rights of BH&G and are therefore entitled to an award of their attorney's fees and costs.

139. Defendants acted with oppression, fraud, or malice and are therefore liable for punitive damages under NRS 42.005.

### **SEVENTH CAUSE OF ACTION**

#### **Unjust Enrichment**

140. Plaintiffs re-allege and reincorporate every allegation from the paragraphs above.

141. BH&G conferred a benefit on Defendants by improving the property in preparation for the Project.

142. If Trez is not enjoined from foreclosing on the property, it will appreciate this benefit, including from (1) the increase in the property's value as the result of BH&G's improvements to the property, and (2) the expected windfall resulting from a short sale credit bid at the foreclosure auction; which combined, on information and belief, is estimated to be a windfall in excess of \$15 million.

143. Trez has accepted these benefits and will retain them if allowed to proceed with the foreclosure sale, and it would be inequitable for Trez to retain these benefits without payment.

144. As a result of Defendants' conduct, BH&G has suffered damages in excess of \$15,000.

145. Defendants' continued conduct will cause BH&G immediate irreparable harm for which BH&G has no adequate remedy at law.

146. Plaintiffs have been required to retain counsel to protect their rights and the rights of BH&G and are therefore entitled to an award of their attorney's fees and costs.

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**EIGHTH CAUSE OF ACTION****Declaratory Relief**

147. Plaintiffs re-allege and reincorporate every allegation from the paragraphs above.

148. A justifiable controversy exists between two or more parties regarding their respective rights pursuant to the Loan Agreement.

149. Plaintiffs assert that no provision of the Loan Agreement allows Trez to prohibit BH&G working with the City to obtain the necessary approvals and permits for the Arch Culvert construction, or otherwise allows Trez to interfere with BH&G's ability to do the same.

150. The issue is ripe for judicial determination; and Plaintiffs therefore ask the court to determine the parties' relative rights under the contract.

151. Plaintiffs have been required to retain counsel to protect their rights and the rights of BH&G and are therefore entitled to an award of their attorney's fees and costs.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for relief as follows:

1. For relief restraining and enjoining Defendants

a. from proceeding with the pending foreclosure sale, currently scheduled for January 10, 2023, until at least such time as the Court has the opportunity fully hear and resolve this dispute; and

b. from acting in any way to prevent or inhibit BH&G from communicating with the City or any other government agency, or otherwise working to obtain the permits and approvals necessary to advance the construction of the Arch Culvert and related infrastructure, as may be required by any new lender;

2. For actual and compensatory damages in excess of \$15,000, the precise amount to be determined at trial;

3. For punitive damages under applicable Nevada law;

4. For a declaration that no provision of the Loan Agreement allows Trez to prohibit BH&G from working with all municipalities and communicating with the permit issuer, the City of Henderson, to obtain the necessary approvals and permits for the Arch Culvert construction, or

1 otherwise allows Trez to interfere with BH&G's ability to do the same

2 5. For pre- and post-judgment interest; and

3 6. For reasonable attorney's fees and costs of suit.

4 Dated: December 27th, 2022

SNELL & WILMER L.L.P.

5 By: /s/ Richard C. Gordon

6 Richard C. Gordon, Esq.

Erik J. Foley, Esq.

3883 Howard Hughes Parkway, Suite 1100

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8 *Attorneys for Plaintiffs*

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I declare under penalty of perjury that the foregoing is true and correct.

DATED this 27th day of December 2022.

Randy C. Norton

4854-2907-7317.7